

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION - FOR TRANSFER No. 1190 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL NITABEN W/O PATEL DINESHKUMAR DAHYALAL

Versus

PATEL DINESHKUMAR DAHYALAL

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Appearance :

MR AMIT C NANAVATI for Applicant.

RULE SERVED for Opponent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 21/08/2006

ORAL JUDGMENT

By filing this Misc. Civil Application, the applicant has prayed that Hindu Marriage Petition No.121/2001 pending before Civil Judge (S.D.) Mehsana, may be transferred to Civil Judge (S.D.), Deesa. Aforesaid Hindu Marriage Petition is filed by respondent – husband before Mahesana Court for getting decree for divorce.

It seems that initially an ex-parte decree was passed in aforesaid Hindu Marriage Petition, as the present applicant had not remained present before the trial Court. Thereafter, present applicant had preferred an appeal being Regular Civil Appeal No.93/2004 for setting aside ex-parte decree. Learned Presiding Officer, Fast Track Court No.4, Mehsana, vide his order dated 14-3-2006, set aside the ex-parte decree passed in Hindu Marriage Petition No.121/2001 and restored said proceedings to file with a direction to decide the same by 31st June, 2006.

Thereafter, the applicant has preferred this application for transferring aforesaid Hindu Marriage Petition from Mehsana Court to Deesa Court. This application is submitted to this Court on 24th April, 2006, i.e., after the order passed by learned Judge restoring Hindu Marriage Petition No.121/2001 to file.

Mr.Nanavati, learned advocate for the applicant submitted that the applicant – wife has also filed a petition for restitution of conjugal rights being Hindu Marriage Petition No.19/2003, which is pending before Civil Judge (S.D.), Deesa. He submitted that applicant is residing with his father and since her father is aged one, she finds it difficult to travel from Deesa to Mehsana for the purpose of attending aforesaid Hindu Marriage Petition No.121/2001. He also submitted that since the applicant could not go to Mehsana, ex-parte decree was passed in aforesaid Hindu Marriage Petition, therefore, in the interest of justice, it is prayed that proceedings pending before Mehsana Court may be transferred to Deesa Court so that both the proceedings, i.e., petition for divorce filed by the husband and petition for restitution of conjugal rights filed by the wife, can be heard and decided together.

Though served, respondent has not appeared before the Court but he has submitted his written statement. It is stated by the respondent that if the proceedings are transferred from Mehsana Court to Deesa Court, it may delay the proceedings further, as in the divorce petition evidence of the husband is already over and now evidence of wife is to be recorded. Respondent has also denied various allegations made in present application.

Considering the case papers and considering the arguments of Mr.Nanavati, learned advocate for the applicant, it is clear that wife has filed a petition for restitution of conjugal rights which is pending before Deesa Court and respondent – husband is required to attend Deesa Court for the purpose of defending that case. Therefore, Hindu Marriage Petition No.121/2001 pending before Civil Judge (S.D.), Mehsana is ordered to be transferred to Deesa Court, where the same can be heard by learned Civil Judge (S.D.), before whom Hindu Marriage Petition No.19/2003 is pending so that both the petitions can be decided simultaneously and there may not be any contradictory findings, as one issue is regarding divorce and the other is with regard to restitution of conjugal rights.

In view of what is stated herein above, this Misc. Civil Application is allowed. Hindu Marriage Petition No.121/2001 pending before Mehsana Court stands transferred to Deesa Court. Principal District Judge, Mehsana is directed to transfer case papers of Hindu Marriage Petition No.121/2001 to Principal District Judge, Banaskantha at Palanpur and after such transfer Principal District Judge, Banaskantha at Palanpur may assign aforesaid Hindu Marriage Petition to learned Civil Judge (S.D.), Deesa before whom Hindu Marriage Petition No.19/2003 is pending so that both the matters can be heard and decided together.

After such transfer both the aforesaid Hindu Marriage Petitions may be concluded as early as possible and preferably within a period of three months.

At this stage, Mr.Nanavati, learned advocate for the applicant has assured the Court that his client will cooperate with early hearing of the matters and will not ask for adjournemnt.

Accordingly, this Misc. Civil Application is allowed. Rule is made absolute to the above extent with no order as to costs.

Writ to be sent to Principal District Judge, Mehsana as well as to Principal District Judge, Banaskantha at Palanpur forthwith.

(P.B.MAJMUDAR, J.)

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